

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-030019

12/12/2008

HON. EDWARD O. BURKE

CLERK OF THE COURT  
L. Nixon  
Deputy

FOWLER ELEMENTARY SCHOOL DISTRICT JENNIFER N MACLENNAN  
NO 45, et al.

v.

SANDRA E DOWLING, et al.

COLLEEN CONNOR

MINUTE ENTRY

The court has had the issues raised at the hearing on Plaintiffs' Application For Order To Show Cause and Defendants' Motion To Dismiss under advisement and issues the following ruling.

The court was concerned that there is no actual case or controversy because no party has opposed the relief sought by Plaintiffs. However, the attorney for the Defendants requested that a ruling be issued and this is that ruling. Accordingly,

Defendants' Motion to Dismiss is DENIED and Plaintiffs' Application For Declaratory Relief is GRANTED. The court finds that the unification question on the November 4, 2008 ballot did not pass by a majority of the qualified electors in the Plaintiff districts for the following reasons.

A.R.S. § 15-912.01(4)(D) provides:

A majority of the qualified electors in each affected school district is required to approve a proposed unification plan. If the unification plan is approved, the unified school district will become operational at the beginning of the next fiscal year that begins at least twelve months after the unification plan is approved. If any of the affected districts fail to

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approve the proposed unification plan, the plan is void. The commission may revise the original unification plan and resubmit the plan to the qualified electors of each affected school district. If a majority of the qualified electors in any one of the affected school districts fails to approve the unification plan, the school district shall not become part of the unified school district.

The Superior Court said in Cronley v. City of Tucson, 6 Ariz. 235, 56 P. 876, 877 (Ariz. Terr. 1899):

There is a clear distinction between an elector and a voter. The former is one who legally has the right to vote, and the latter is not only one who professes the right, but who does actually vote.

When a statute's plain language is clearly unambiguous, a court must give effect to that language without resorting to any other rule of statutory construction. Ariz. Dep't of Revenue v. Salt River Project Agric. Improvement & Power Dist., 212 Ariz. 35, 38 126 P.3d 1063, 1066 (App. 2006).

The Arizona Supreme Court has held that the words "approved by a majority vote of the qualified electors" does not mean "approved by a majority of the qualified electors voting thereon". Adams v. Bolin, 74 Ariz. 269, 247, P.2d 617, 619 (1952). The court held that there was no absurdity or ambiguity in interpreting the words "approved by a majority vote of the qualified electors: to mean approved by a majority of all those registered to vote.

In State v. Lopez, 163 Ariz. 108, 786 P.2d 959, 967 (1990) the Superior Court declined to overrule Adams v. Bolin and the meaning of "qualified electors" in a death penalty case; see also Lincoln v. Holt, 215 Ariz. 21, 24, 156 P.3d 438, 441 (App. 2007), which cited Adams v. Bolin for rules of statutory construction; Sedona Private Property Owners Ass'n v. City of Sedona, 192 Ariz. 126, 961 P.2d 1074 (App. 1998) which held that qualified electors mean those registered to vote, not just those who actually voted, citing Adams v. Bolin, and City of Flagstaff v. Mangum, 164 Ariz. 395, 793 P.2d 548 (1990) which distinguished but did not overrule Adams v. Bolin.

In 1934, the Arizona Supreme Court defined "qualified elector" or "elector" as an individual who "may pass on a measure at the polls" or who is "legally entitled to vote on it". Ahrens v. Kerby, 44 Ariz. 269, 37 P.2d 375, 378 (1934); Hunt v. Superior Court in and for Navajo County, 64 Ariz. 325, 170 P.2d 293, 295 (1946) "A qualified elector is one who has complied with the election laws, and who is registered as a voter at the time he signs the petition."

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A.R.S. § 16-121(A) defines a qualified elector as follows:

A person who is qualified to register to vote pursuant to § 16-101 and who is properly registered to vote shall, if he is at least eighteen years of age on or before the date of the election, be deemed a qualified elector for any purpose for which such qualification is required by law, except as provided in § 16-126. A person continues to be a qualified elector until that person's registration is canceled pursuant to § 16-165 or until that person does not qualify as a resident as described by § 16-101, subsection (b).

A.R.S. § 15-401 defines school electors as follows:

A person who is a qualified elector of the state under § 16-121 in the boundaries of the school district twenty-nine days immediately preceding the election is qualified to vote at an election of the school district in the precinct in which he is registered. For the purposes of this title, the term "qualified school elector," "school elector," or "elector" shall have the qualifications prescribed in this subsection.

Other statutes that provide authority for school districts to unify specify that it required a majority of the voters rather than a majority of the qualified electors to pass the measure. The language of the statutes quoted below supports that the legislature could have chosen different words in enacting A.R.S. § 15-921.01:

- a. A.R.S. § 15-444 (E) requires as follows for two small school districts (less than two hundred pupils) to form a union high school district: "majority of the persons voting within each school district compromising the proposed union high school district votes in favor of establishment of a union high school district..."
- b. A.R.S. § 15-450 (F) requires as follows for the formation of a new joint unified school district: "If a majority of the votes cast in each count of persons who reside within the proposed district favors formation of the proposed joint unified school district..."
- c. A.R.S. § 14-458(C) requires as follows for existing districts to subdivide: "a majority of the votes cast by the qualified electors

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in each of the areas proposed as a school district must approve the division of the existing school district and the formation of the new school district.”

- d. A.R.S. § 15-459(G) requires as follows for existing districts to consolidate: “a majority of the votes cast in each district favors consolidation...”

In enacting A.R.S. § 15-912.01(4)(D) the legislature could have easily used the phrase “majority of the persons voting within each school district” instead of the phrase “qualified electors.” This is particularly true because Arizona statutes already defined a qualified elector in A.R.S. §16-121(A). Because the phrase “qualified electors” was used the court must adhere to the definition in A.R.S. §16-121(A) and follow the Supreme Court’s ruling in Adams v. Bolin, 74 Ariz. 269, 247 P.2d 617 (1952).